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3 Official Court
4 Reporter:

Cynthia Fazio, RMR, CRR, CRC
United States District Court
300 Ala Moana Blvd., C-270
Honolulu, Hawaii 96850

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25 Proceedings recorded by machine shorthand, transcript produced
with computer-aided transcription (CAT).

1 MONDAY, NOVEMBER 30, 2020 1:30 P.M.

2 THE COURTROOM MANAGER: Criminal Number
3 17-00582JMS-WRP-2, Criminal Number 18-00068JMS-WRP-2, United
4 States of America versus Louis M. Kealoha.

5 These cases have been called for sentencing as to
6 Counts 1, 2, 6 and 8 of the first superseding indictment in
7 Criminal 17-582, and Count 4 of the third superseding
8 indictment under Criminal 18-68.

9 Counsel, please make your appearance for the record.

10 MR. ORABONA: Good afternoon, Your Honor. Joseph
11 Orabona and Michael Wheat on behalf of the United States.

12 THE COURT: Yes, good afternoon.

13 MR. BARBEE: Good afternoon, Your Honor. Rustam
14 Barbee appearing with Louis M. Kealoha, who, of course, is
15 present here at the defense table.

16 THE COURT: All right. Yes, good -- good afternoon to
17 both of you. You may be seated. Thank you.

18 All right. So we have a number of things to cover
19 this afternoon.

20 So Mr. Kealoha was found guilty by a jury in 17-582,
21 Counts 1, 2, 6 and 8. And then he pled to Count 4 of the third
22 superseding indictment in 18-68. And of course, there was a
23 plea agreement in relation to that count.

24 So, Mr. Barbee, let me start with you and ask if you
25 and Mr. Kealoha have had sufficient time to read, review and

1 discuss the presentence report and to file any objections,
2 whether factual or legal, in writing.

3 MR. BARBEE: Yes, Your Honor, we have.

4 THE COURT: All right. Is that right, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Thank you.

7 All right. So, first of all, I do accept the plea
8 agreement in the case. I find that it does adequately reflect
9 the seriousness of the actual offense behavior, and accepting
10 it will not undermine the statutory purposes of sentencing.

11 So what I thought I would do is -- is go through what
12 I understand the remaining objections to be and make sure I
13 have that right, and see -- make sure counsel agrees with me.

14 Starting with the government, there's an objection to
15 the minus two for role in the offense relating to the bank
16 fraud calculation. And I believe that's all on the
17 government's side that remains. Is that accurate?

18 MR. ORABONA: That's correct, Your Honor.

19 THE COURT: Okay. And then, Mr. Barbee, for you, you
20 submit that Mr. Kealoha should not receive a three-level upward
21 adjustment for role in the offense, and you object to the
22 offense level of 24 in the bank fraud case under
23 2B1.1(b)(17)(A). And that's what I have as your remaining
24 objection. Is that accurate?

25 MR. BARBEE: The only one which is collateral to the

1 last one you mentioned is the two-level grouping increase.

2 THE COURT: That follows from that, though, right?

3 MR. BARBEE: That -- that's right.

4 THE COURT: I mean, if I agree with you on that, then
5 we have to look at that.

6 MR. BARBEE: That's right.

7 THE COURT: Okay. Okay.

8 All right. So let's start with the government's then.
9 You want to -- Mr. Orabona, are you going to be arguing?

10 MR. ORABONA: Yes, Your Honor. We would submit on our
11 papers, unless the Court has any questions with respect to our
12 position on the minor role.

13 THE COURT: All right. Well, I'm going to start with
14 the minus two for the role on this, Mr. Barbee. Do you have
15 anything you want to add to that?

16 MR. BARBEE: Depends on which way the Court is going
17 to rule, but if I need to make a record, I would like to make a
18 record.

19 THE COURT: All right.

20 MR. BARBEE: Okay. Your Honor, with regard to the
21 two-level assess -- or given by the Probation Department, Your
22 Honor, there's a significant difference between the Kealoha
23 defendants in this case obviously. And they should be viewed
24 differently and punished differently.

25 Mr. Kealoha had no knowledge or participation in much

1 of his spouse's activities that she conducted. For example, he
2 had no knowledge or participation in her thefts committed while
3 acting as an attorney and a fiduciary for Ransen and Ariana
4 Taito, nor did he participate in requesting that Ransen Taito
5 lie to the grand jury. That was all her.

6 He did not assist in arranging for friendly counsel
7 for Mr. Taito. He had no participation in her creation and
8 forgery of a false HPD document that was purportedly taken and
9 signed by the Honolulu police officer to support her claim of
10 identity theft.

11 He had no knowledge or participation in her creation
12 and use of a fictitious notary, Alison Lee Wong. He had no
13 participation in her opposing Gerard Puana's DANC plea that had
14 already been granted earlier. And of course, Judge, he had no
15 participation in her asking Jesse Ebersole to lie to the grand
16 jury, and he certainly had no knowledge of her six-year long
17 secret relationship and the gifts given to Mr. Ebersole.

18 Therefore, we submit that there is a significant
19 difference justifying a two-level minor role adjustment as
20 reflected in Paragraph 143 of the presentence report.

21 THE COURT: All right. Thank you.

22 All right. So to be clear, just so everyone knows,
23 we're talking about the bank fraud calculation now, because
24 we -- we calculate these separately. And that's what you --
25 that's what you're talking about, Mr. Barbee. I just want to

1 make it clear for everybody else here --

2 MR. BARBEE: Yes, Your Honor.

3 THE COURT: -- that's what we're talking about.

4 So the government objects to this minus two for role
5 in the offense. I am going to uphold the Probation's view on
6 this.

7 Section 3B1.2(b) of the guidelines provides for a
8 two-level reduction if a defendant was a minor participant in
9 any criminal activity. The defendant bears the burden of
10 proving entitlement by preponderance of the evidence. And a
11 "participant" is defined as a person criminally responsible for
12 the commission of the offense, although the person need not
13 have been convicted. An average participant is viewed in
14 relation to the defendant's own scheme, not some hypothetical
15 offender, for instance.

16 And here, it's clear there are two participants in the
17 bank fraud offense, the two Kealohas.

18 Now, I'm not going to go into great detail as to
19 Amendment 794, effective November 1, 2015, and what it says,
20 but for the record, I've -- I've reviewed all of that and am
21 aware of it.

22 So for the reasons stated in the report on Pages 63
23 and 64, I agree that the two-level downward adjustment applies.
24 Although I do recognize the government has points here, and
25 this is a bit of a close call, but I do believe by a

1 preponderance of the evidence, the defense has shown it does
2 apply, the two-level reduction.

3 In short, I agree under the totality of the
4 circumstances that Louis K. Kealoha is substantially less
5 culpable than Katherine as it relates to the bank fraud.

6 Now, Katherine is the only other participant, so I
7 must compare his role with hers. And I also agree that
8 although Louis likely understood the general scope of the
9 illegal conduct as argued by the government, Katherine ran the
10 show. I think that's pretty clear. As Mr. Barbee points out,
11 it was Katherine, for example, who knew about the Taito trust
12 accounts and was able to pledge those assets illegally as part
13 of the loan applications. So I'm going to uphold that
14 two-level reduction.

15 Now, as far as the mailbox case, Mr. Barbee, you argue
16 that Mr. Kealoha should not receive a three-level upward
17 adjustment for a role in the offense, and I think the
18 government probably is only going to argue for a plus two based
19 on the plea agreement.

20 MR. ORABONA: That's correct, Your Honor.

21 THE COURT: All right. Mr. Barbee, then I'll turn to
22 you on that, if you wish to argue anything beyond your
23 briefing.

24 MR. BARBEE: No, Your Honor. We'll submit on our
25 papers.

1 THE COURT: All right. Anything from the government?

2 MR. ORABONA: Same, Your Honor, we submit.

3 THE COURT: All right. So the report includes a
4 three-level upward adjustment for role in the offense for an
5 aggravating role in the mailbox case. So now we're not in the
6 bank fraud part but in the mailbox case.

7 The government carries the burden by preponderance of
8 the evidence to prove an upward adjustment for the role -- for
9 a role in the offense applies. For a three-level increase, the
10 defendant must be a manager or supervisor but not an organizer
11 or leader, and the criminal activity must involve five or more
12 participants or was otherwise extensive. A "participant" is
13 defined again as a person criminally responsible but need not
14 be convicted. To qualify, a defendant must have been the
15 manager or supervisor of one or more other participants.

16 And so the government must demonstrate that the
17 defendant oversaw one or more other participants, meaning
18 persons who are criminally responsible for the commission of
19 the offense. But again, need not have been convicted.

20 In making this determination, a district court should
21 consider the exercise of decision-making authority, the nature
22 of participation in the commission of the offense, the
23 recruitment of accomplices, the claimed right to a larger share
24 of the fruits of the crime, the degree of participation in
25 planning or organizing the offense, the nature and scope of the

1 illegal activity, and the degree of control and authority
2 exercised over others.

3 And that comes out of comment 4.

4 Now, first, there's an assertion that there were not
5 five participants. Now, we obviously have Louis Kealoha,
6 Katherine Kealoha, Derek Hahn and Bobby Nguyen. We have the
7 four convicted. And although I agree there may be a question
8 as to whether Sellers was a participant given his plea and the
9 specific testimony, I conclude rather easily that Niall Silva
10 was a participant.

11 Mr. Silva testified at trial that Derek Hahn had
12 called him on June 22nd, 2013, at 2:30 p.m., and asked him to
13 come to the office. Lieutenant Hahn then gave him the hard
14 drive for processing, and told him that it wouldn't look good
15 if the truth was known that Bobby Nguyen had obtained the hard
16 drive. So Mr. Silva did as asked. And then clearly obstructed
17 justice.

18 He filled out that false HPD report that we saw at
19 trial so many times, stating that he had retrieved the hard
20 drive at the residence at 8:59 a.m. And then he, of course,
21 was the first witness at the Gerard Puana mailbox trial and
22 under oath told the same lie. And then after his testimony, he
23 let Bobby Nguyen know that he had lied so that Bobby would not,
24 quote, throw me under the bus.

25 Now, let me say the obvious. Louis Kealoha was the

1 chief of the Honolulu Police Department, and those in the CIU
2 were largely handpicked or at least approved by him and worked
3 under him. And I can draw reasonable inferences from the
4 evidence adduced at trial that Derek Hahn and Bobby Nguyen were
5 part of the overall scheme to frame Gerard Puana at the behest
6 of their supervisor, Louis Kealoha.

7 For example, the only fair inference that I can draw
8 from the fact that CIU was involved in this massive 24-hour
9 surveillance on Gerard Puana in June 2013 is that it was
10 approved by Louis Kealoha.

11 Now, to be clear, I am not finding that the adjustment
12 applies simply because Louis was chief and others were
13 subordinate to him. That is not enough by itself. But I am
14 making the finding based on the totality of the evidence before
15 me, which includes reasonable inferences, that Louis acted in
16 his role as chief to take specific actions by his subordinates.
17 That is, he was a manager and supervisor to Hahn, Nguyen and
18 Silva, and there were five or more participants. And he
19 otherwise qualifies for the three-level adjustment because he
20 was a manager or supervisor of one or more. So I'm going to
21 uphold that finding.

22 All right. Mr. Barbee, the 24-hour -- sorry,
23 24-hour -- 24-level increase under the bank fraud guideline.

24 MR. BARBEE: Yes, Your Honor. Thank you.

25 First of all, I would note that in the government's

1 memorandum that they agreed that, on Page 11, there was no
2 intended loss and there was no loss. Also in the memorandum of
3 plea agreement and the sentencing agreement, parties agreed
4 that the two-level enhancement would apply as opposed to the 24
5 level in that section.

6 So the section we're talking about is 2B1.1, of
7 course. And 2B1.1(b)(17)(D) was applied instead of the
8 two-level increase that is specifically discussed in the
9 sentencing agreement and in the memorandum of plea agreement.

10 So my point is this, Judge: That that was negotiated
11 in good faith between the parties, and there is good policy
12 reasons for this Court, and I don't presume to tell the Court
13 what to do, but there are good reasons that do exist for
14 supporting agreements such as this between the parties. The
15 goal in reaching agreement before -- of these types before
16 appearing before the Court is to resolve disputed matters and
17 avoid the needless consumption of time, resources in
18 litigation.

19 So in cases like this where the parties have agreed
20 that a two-level enhancement would potentially apply, but have
21 not agreed as the Probation Department has found, that a
22 24-level or an enhancement to a level 24 applies, especially in
23 this case given that it's agreed that there was no intended
24 loss, and there was no actual loss. And I would submit that
25 zero dollar loss should be punished less severely than cases

1 where a theft, larceny or embezzlement, which is the title of
2 the -- of the guideline provision, where the victim actually
3 suffers an actual loss of over \$1 million. And here again, it
4 was zero.

5 So the punishment fundamentally, it seems to me,
6 should be less for Mr. Kealoha's situation as opposed to the
7 latter situation where funds were actually intended to cause a
8 loss and did cause a loss.

9 THE COURT: All right. Thank you, Mr. Barbee.

10 MR. ORABONA: Your Honor, we stand by the plea
11 agreement as well. We recommended a two-level increase for
12 this because there was no loss. The banks didn't suffer a loss
13 in this particular case.

14 THE COURT: All right. All right. Well, see, this is
15 the problem I have with these plea agreements where you do
16 that, because, wow, you missed it, didn't you? Don't say a
17 word. Because I don't want you to breach the plea agreement.
18 But you missed it.

19 As recommended by Probation under the bank fraud
20 guidelines, an offense level 24 applies in this case because
21 the defendant derived more than \$1 million in gross receipts
22 from one or more financial institutions as a result of the
23 offense. This is under 2B1.1(b) (17) (A) and (D).

24 It states, quote: If the defendant derived more than
25 \$1 million in gross receipts from one or more financial

1 institutions as a result of the offense, and if the resulting
2 offense level is less than 24, increase to 24.

3 The problem is it's plain English. There's no --
4 you're arguing 3553(a) now, Mr. Barbee, not guidelines is the
5 problem I'm having. I've got to apply the guidelines. And
6 it's pretty clear the way this guideline is written. There are
7 no exceptions. And it talks about gross receipts.

8 Gross receipts equal the amount -- the entire amount
9 of the loan proceeds. Although there's not a lot of law in
10 this guideline provision, United States versus Gharbi, 510 F.3d
11 550 -- excuse me -- a Fifth Circuit case from 2007 so held.

12 So Louis and Katherine received a total of
13 \$3.7 million from financial institutions as a result -- as a
14 result of the bank fraud. Now, I understand this is not a loss
15 amount. Money was paid off. It represents the funds, the
16 gross funds received based on the fraud. But the fact that
17 there's no pecuniary loss is not relevant to this specific
18 guideline provision.

19 And the fact that the parties stipulated to a
20 different conclusion simply doesn't bind me. I think I made
21 that as clear as I could when I took the pleas. This is not in
22 my view a close call. The provision applies, and there is an
23 increase to 24 as a result.

24 All right. So I understand there are no further
25 objections to either factual findings or conclusions as to

1 guidelines; is that right?

2 MR. ORABONA: That's correct, Your Honor.

3 MR. BARBEE: Correct.

4 THE COURT: All right. So I will adopt the factual
5 findings in the report and conclusions as to the guidelines as
6 well.

7 All right. So, Mr. Barbee, I think I'll start with
8 you then. Well, let me -- let me go through what we have here.

9 On the mailbox case, we have a total offense level 24,
10 the bank fraud case a 22, and then we have plus two on the unit
11 calculation to get from a 24 to a 26, minus two for acceptance
12 gets us to a 24. And a 24 criminal history, category 1 is 51
13 to 63 months, supervised release of two to five years, fine
14 range of 20,000 to 200,000, restitution of a total of
15 \$237,698.56 based on the plea agreement. Is that right?

16 MR. ORABONA: That's correct, Your Honor.

17 THE COURT: All right. And we'll get -- we'll get to
18 some of the questions I have about that a little bit later.
19 And a \$500 special assessment.

20 Do both counsel concur with that?

21 MR. ORABONA: Yes, Your Honor.

22 MR. BARBEE: Yes, Your Honor.

23 THE COURT: All right.

24 All right. So, Mr. Barbee, with that then I will turn
25 to you.

1 MR. BARBEE: Yes, Your Honor. In addressing the
2 appropriate sentence to be meted out here today to Mr. Kealoha,
3 I would just point to the factors set forth at 18 U.S.C. 3553.
4 The sentencing law does require that the Court impose a
5 sentence not greater than necessary to effectuate the goals of
6 sentencing and the policies of sentencing. One of the factors
7 that is mentioned very early in the statute, not the paramount
8 thing, but one of the paramount factors is the history and
9 characteristics of the person to be sentenced.

10 The Probation Department reports details of the
11 history of Mr. Kealoha. He was born and raised on the island
12 of Oahu under humble circumstances. He has no previous charges
13 or convictions of anything. He's 60 years old. Prior to
14 involvement and commission of this offense, he had a successful
15 30-plus-year career serving the community in law enforcement,
16 beginning at the rank of rookie police officer and ending, of
17 course, as the chief -- the tenth Chief of Police for the City
18 and County of Honolulu.

19 While working full time, he attended college. He got
20 his associate's, his bachelor's, his master's and his
21 doctorate, all by working full time. He married his
22 then-sweetheart and raised a child together. His mother
23 Beatrice, age 86, wrote a very brief letter to the Court, which
24 I did not receive in time to get to the Court earlier.

25 THE COURT: I did get it, though.

1 MR. BARBEE: I've given a copy to the prosecution,
2 Your Honor. I'd like to read just a couple excerpts from it.

3 "Your Honor, my name is Beatrice L. Kealoha. I'm
4 86 years old and the mother of Louis M. Kealoha. My husband
5 Louis K. Kealoha and I were married for 43 years before his
6 passing in 2001."

7 Skipping ahead: "I later worked at Pearl Harbor as a
8 computer operator from 3 to 11 p.m. so that I could continue
9 being a stay-at-home mom. We later opened a local Hawaiian
10 food restaurant in which my husband and sons all helped in the
11 operation.

12 "One day while at City Hall, there's an advertisement
13 recruiting people for the Honolulu Police Department. From our
14 many talks, I knew that Louis wanted to serve the community.
15 He took the application with him knowing that this may be his
16 calling. Louis became a police officer at 22 years old and was
17 selected to enter the recruit class in 1983. Having the heart
18 and desire to make law enforcement his career, he attended
19 night school and earned several college degrees.

20 "When Louis got married, he told my husband and me, I
21 want to be married once and raise my family the same way he was
22 raised. Father devoted to work and mother took care of
23 finances. Louis has always worked diligently throughout his
24 life and was content in the simple things in life. Never a
25 lavish lifestyle, like is reported in the media. He never

1 checked on his finances and always felt that he was living
2 within his means and believed what he was told by his wife.
3 His only weakness was truly -- being truly dedicated to his
4 marriage vows and utmost trust in his wife.

5 "In closing, I humbly ask for the Court's mercy on his
6 sentence."

7 And then, Judge, I'd like to point out the presence in
8 the courtroom of friends and family. Mom Beatrice is here;
9 brother, Andre Peters; sister-in-law, Rose Peters; long-time
10 friends, Karen Mondoy and Kurt Kakuna -- Kekuna are all here in
11 support.

12 So Mr. Kealoha does have friends and family support,
13 unlike a lot of defendants that appear before this Court
14 regularly, all alone with just their lawyer.

15 I'd like to read excerpts, if I could, Judge, from
16 some of the letters that were submitted to the Court. And
17 starting with Andrew Lum, retired HPD major.

18 Excerpts include: "Recently with all the media
19 coverage of the allegations prior to conviction, there was a
20 lot of information revealed that was deeply disturbing and
21 difficult to accept knowing the character of Louis. The
22 information regarding the extramarital affair of his wife was
23 one that was especially surprising to me, and I'm sure hurtful
24 to Louis. I realize I didn't know his wife Kat as well as I
25 thought, and this information was shocking to me because --

1 well, Louis was very committed to his marriage and family.

2 "I reserve judgment on Kat on her allegations. I hope
3 that you would give Louis a separate consideration in
4 determining -- determining his punishment. His role in all of
5 this I believe was on a different level. I'm not absolving him
6 of blame. I'm sure there were ways he could have made himself
7 more aware of things and taken more proactive steps in
8 resolving some of these serious issues his wife had involved
9 him in."

10 From Karen Mondoy, just briefly, Judge: "Like other
11 spouses, he loved his wife so much and placed his total and
12 complete trust in her to handle the daily affairs, financial
13 decisions and family matters. I'm sure there are other spouses
14 who are in very similar situations and predicaments, however
15 ignorant it may be."

16 And I think a part of that last statement, Your Honor,
17 comports with the evidence at trial where it was testified to
18 that during a forensic evaluation of the many, many, many bank
19 accounts between the Kealohas, there were several that were
20 Katherine Kealoha only. I think at least two that were joint.
21 And an examination of the past history that Mr. Kealoha wrote
22 few, if any, checks from that account. The numbers ten and
23 five were mentioned. It wasn't confirmed, but it was extremely
24 few over those many, many years.

25 Next from -- I believe this is David Scheidt, good

1 friend, one surfing buddy. "I consider myself one of Louis'
2 trusted friends and confidant. I can say with confidence based
3 on my relationship with Louis, though he was the Chief of
4 Police in public, in private his wife Katherine ruled the
5 house, finances, and day-to-day decisions regarding their
6 relationship and marriage. We were talking in the ocean, I
7 could see the embarrassment on his face once the fireman was
8 indicted on lying to federal officers. I believe he truly had
9 no idea. Louis was saying during trial that he realized he
10 didn't know the person he married."

11 Next from Christopher Case-Grillo: "I am absolutely
12 confident that Louis possesses deep and genuine contrition for
13 his circumstances for which he is being held accountable. He's
14 a man who will take ownership of many decisions. He is not a
15 self-pitying, denying and bitter character. This is simply not
16 his true nature. In many ways, Louis is philosophical and
17 keenly aware of the need for him to take responsibility,
18 recognize the lessons to be learned, and move forward with
19 personal integrity in a productive fashion for the remainder of
20 his life. I believe he will use his extensive education,
21 experience and hard-earned wisdom to redeem himself and be an
22 asset to others. It is my hope that justice is meted out, so
23 will be mercy."

24 And I was going to talk about some mitigating factors
25 to emphasize to the Court, but -- I know it might be unusual,

1 but I would like him to allocute before I do these.

2 THE COURT: All right. You may, yes. Yes, that's
3 fine.

4 So let me just explain to you what your rights are,
5 just so it's on the record, Mr. Kealoha. You have a right to
6 speak to me, sir. This is your opportunity to do so.
7 Mr. Barbee would like to sort of do that before he finishes up,
8 which I'm fine with. But I just want you to know you don't
9 have to, and if you don't speak, I won't hold it against you.
10 If you do speak, the only thing I ask is you pull that
11 microphone up a little bit and speak into it. With masks and
12 face shields and everything, it's a bit of a challenge. All
13 right?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right.

16 THE DEFENDANT: Dear Judge Seabright, I am deeply
17 sorry and ashamed for the negative impact my actions had on
18 Florence and Gerard Puana, the community, the Honolulu Police
19 Department, and my family and friends. Gerard used to be my
20 friend, and I betrayed him falsely believing he was a threat to
21 my family.

22 I was born and raised in Honolulu. While growing up
23 it was always my goal to be the best person I could be and to
24 serve my community. As a result, I was privileged to serve in
25 the Honolulu Police Department as a police officer for

1 33 years. I have strong family values. I did my best to be a
2 good son, brother and father.

3 I also got married later in life so I could adequately
4 provide for my wife and daughter. Although my life was busy
5 and chaotic, I always made sure to spend quality time with my
6 family. In addition, I actively contributed time and resources
7 to my community through various charities and educational
8 institutions. In my spare time, I put myself through college,
9 conducted classes to help police officers to study for
10 promotional examination, and was a college lecturer to prepare
11 the next generation of law enforcement professionals.

12 In my life I have failed more than I succeeded. But I
13 never gave up. In this situation I failed to live up to the
14 standards I set for myself and as a police chief. In an
15 orderly society, trust in public officials is paramount. I
16 betrayed that trust and am truly sorry.

17 The damage I have caused is left to others such as
18 police, government officials and the like, who had no
19 involvement in this situation, to work to repair this damage.

20 I know my decisions have disappointed a lot of people
21 and know it will haunt me for many years to come. This is the
22 last place in my life I thought I would be, and I vow never to
23 be here again.

24 I am deeply sorry, embarrassed, and regretful for my
25 actions, and am accepting of punishment. I will not let this

1 mistake identify me and use it as a life lesson. In the future
2 I plan to use this experience as an opportunity to share what I
3 have learned with others so they can avoid being in this
4 situation.

5 In closing, I am sorry for the hurt, pain and
6 disappointment I caused, and I take full responsibility for my
7 actions. Thank you, Your Honor.

8 THE COURT: All right. Thank you.
9 Mr. Barbee?

10 MR. BARBEE: Yes, Your Honor. I have a few mitigating
11 factors I'd like to address which have been identified in
12 supporting imposing a sentence at the low end of the guidelines
13 hopefully.

14 As the presentence report notes, Mr. Kealoha was
15 not -- and the Court's noted this, too -- he was not the
16 mastermind behind these offenses. Katherine Puana did much of
17 her misconduct and misdeeds and crimes unknown to him.

18 He has no criminal history. Strong family support,
19 which I've mentioned. His elderly mother, his brother and his
20 young daughter he'll be leaving when he goes to serve his term
21 of incarceration.

22 He presents a very low risk of recidivism at his age
23 of 60 years. There are studies which I could cite, but won't
24 unless asked to, of measuring recidivism showing that people at
25 age 60 have a markedly lower rate of recidivism than those

1 younger than that age.

2 He has no substance abuse issues. He has no need for
3 treatment or rehabilitative services in that respect. He's
4 likely to bear the lion's share of restitution in this case,
5 without doubt, even though he's arguably lower in terms of
6 culpability. He's shown exemplary conduct while on supervised
7 release for 37 months, beginning October of 2017.

8 And lastly, Judge, two additional factors militate in
9 favor of the sentence at the low end of the guideline range
10 here. And those would be considering the kinds and types of
11 sentences available under 3350 -- 3355 -- 3553. Excuse me.

12 As a former law enforcement officer, Mr. Kealoha will
13 likely suffer increased threats and danger while living inside
14 a prison facility. And he's accepting of that. As a result,
15 he may have to spend periods of time isolated away from other
16 inmates and potential threats which they may pose, which other
17 defendants appearing before this Court -- most other defendants
18 appearing before this Court do not face.

19 As I mentioned, at age 60, he's more -- he's less
20 likely to re-offend, but he's more vulnerable to contracting
21 and suffering serious effects of COVID-19. The virus, of
22 course, has spread quickly among the community, and especially
23 among close confinement situations in prison populations, which
24 is evidenced by the rampant cases in the state and federal
25 facilities.

1 As recently as the last week or two or three, even
2 attorney/inmate calls have been canceled at FDC Honolulu, and
3 FDC Honolulu is not the worst affected of many of the BOP
4 facilities. But it is a recognition of the times we live in
5 and the threats posed to those in a prison population.

6 Studies have shown that infection of COVID at prisons
7 is four times the national rate. So that's unique in this time
8 of late 2020 as opposed to it would have been this time last
9 year or the year before or hopefully a year or two from that.
10 So he will be serving time in a harsher -- harsher conditions
11 during his sentence of incarceration.

12 And we would close by arguing that sentencing
13 Mr. Kealoha to the low end of the guideline range which the
14 Court has found will advance the parsimony clause of the
15 statutes, it will recognize the history and characteristics of
16 his pre-criminal conduct, takes into account the mitigating
17 factors identified by the Probation Department and the defense.
18 And for those reasons, Your Honor, we'd ask that the Court
19 impose the low end sentence.

20 THE COURT: All right. Thank you, Mr. Barbee.

21 Mr. Orabona?

22 MR. ORABONA: Your Honor, I think we have two people
23 that would like to address the Court.

24 THE COURT: All right. You want to call them one at a
25 time then?

1 MR. ORABONA: Yes, Your Honor. I call Gerard Puana.

2 THE COURT: Okay.

3 MR. SEITZ: Good afternoon, Judge. Eric Seitz
4 appearing for Mr. Puana, who is for reasons of health unable to
5 give his statement to the Court. With the Court's permission,
6 I'll read his statement.

7 THE COURT: All right. Mr. Barbee, any objection to
8 that?

9 MR. BARBEE: No objection.

10 THE COURT: All right.

11 MR. SEITZ: "Thank you, Your Honor, for this
12 opportunity to address the Court.

13 "Louis, I thought we were friends. I trusted you and
14 felt safe in your company. I still wonder how someone who took
15 a solemn oath to protect and serve the community could betray
16 so completely and coldheartedly not only an innocent man but a
17 member of your own family. Only God knows what you're capable
18 of doing to a stranger.

19 "You had me followed, stalked and spied upon for
20 weeks. Police officers sat outside my home at night holding me
21 hostage, terrorizing me. These were police officers I once
22 respected, who I believed would protect me, and you turned them
23 into your personal secret police.

24 "I was stunned and in disbelief after you set me up
25 and had me falsely arrested for stealing your mailbox. It was

1 bad enough that you helped plan such an underhanded scheme, but
2 to have me handcuffed and forced to the ground in front of my
3 girlfriend and my fellow church parishioners was nothing short
4 of evil. To further disgrace me, when the federal trial came
5 around, you intentionally perjured yourself and testified to
6 lies about me. And if it matters at all to you, you also put
7 my mother and family through a horrific hell.

8 "I was once a happy guy who enjoyed my life, my son,
9 my family, and friends. My life is now completely changed as a
10 result of the crimes you committed against me. I'm still under
11 medical care for help with symptoms of the trauma. I have
12 problems with stress, bouts of insomnia, and continued panic
13 attacks.

14 "To this day I flinch when I see a police car or
15 notice a car or truck following too close behind me. Thanks to
16 you, I can no longer have faith in the state justice system, in
17 the police department.

18 "There are numerous other issues I could tell you
19 about had I more time. You, Louis, will some day be released
20 to start your life over, but the pain, sorrow and tremendous
21 damage you've caused me and my family can never ever be
22 undone."

23 Thank you, Judge.

24 THE COURT: All right. Thank you.

25 MR. ORABONA: Thank you, Your Honor.

1 Charlotte Malott would like to speak on behalf of
2 Florence Puana.

3 CHARLOTTE MALOTT: Good afternoon, Your Honor. And
4 just a moment, got to put my glasses on.

5 THE COURT: Sure.

6 CHARLOTTE MALOTT: Thank you for giving me this
7 opportunity to speak and address the Court today. This is a
8 family statement.

9 "Louis, when you married Katherine Puana, our *ohana*
10 welcomed you into the family. Our parents John and Florence
11 Puana loved you. They were so proud of you. They accepted you
12 and loved you, as they did all of their grandsons. We trusted
13 and respected you, and we felt so special to have you as part
14 of our family and showed you the hospitality. But in return,
15 you betrayed us.

16 "When it became clear that the reverse mortgage on our
17 family home was a part of Katherine's horrid scheme, our mother
18 reached out to you in desperation because she felt she had a
19 relationship with you. You received a copy of her
20 September 2012 letter, which was also sent to Katherine. She
21 desperately hoped you would do the right thing and meet with
22 her. She just wanted to talk with you and Katherine. She
23 wanted to talk to see if you could work it out.

24 "You not only chose to ignore her letter, but you
25 personally profited from the theft. You also helped and as

1 Katherine with her to plot to seek revenge against our family.
2 Florence and Gerard filed a civil lawsuit hoping to recoup some
3 of our losses. That's when the harassment and badgering of
4 Katherine's grandmother began, ultimately when the sheer
5 terrorism of my brother Gerry occurred.

6 "Gerry under your direction was followed, stalked and
7 spied upon for weeks. Police officers also sat outside his
8 home at night menacing him. Under your authority of office,
9 you used officers who were supposed to protect us, the public,
10 and turned them as agents of terror.

11 "It was on June 30th, 2013, late Friday night, that my
12 sister received a distressing call from our brother Gerry. He
13 said there were men in cars parked outside and they were
14 watching the house. He wasn't sure who they were. My sister
15 said, Gerry sounded terrified. He told her, If you don't see
16 me again, I just want you to know I love you and the family.

17 "Imagine, Louis, what if that was someone you loved?
18 What if that was someone that you brought here today? Perhaps
19 just for a moment you can envision this horror and feeling of
20 helplessness. Ironically, Gerry was advised to call the police
21 and make a report, which he did. But you know well what
22 happened to that police report.

23 "The following evening, Saturday, June 21, 2013, you
24 had Gerry arrested as he was parking his car to attend mass
25 with his girlfriend. How absolutely revolting to have your

1 wife's uncle, an innocent person, who called you his friend,
2 not just arrested but taken into custody at the church he
3 attended every week. I cannot imagine how shocking and
4 humiliating it must have been for him. My brother, your
5 friend.

6 "You, Louis, are an extreme disgrace to your
7 profession. And you took great pains in the aftermath of your
8 2019 conviction to let your family and the department and the
9 community know how the -- and the -- through the media how
10 sorry you were for their embarrassment. But until today, you
11 have never apologized or expressed the slightest regret for the
12 pain you inflicted on our mother or our brother or our family
13 for the years of terror, torment and misery you caused us all."

14 May justice prevail today. Thank you, Your Honor.

15 THE COURT: All right. Thank you.

16 MR. ORABONA: Thank you, Your Honor.

17 You know, the public's faith in the criminal justice
18 system really depends on everybody playing by the rules.
19 That's what the public counts on, everybody playing by the
20 rules. The public and the police department, and as you
21 listened to the victims here today, you know, especially from
22 Ms. Malott, who just spoke, she not only represents, you know,
23 a family that was victimized, but she represents the public,
24 the community that was victimized.

25 And there's a third party that we haven't spoken too

1 much about, and that's the honest men and women of the Honolulu
2 Police Department, because they've been victimized by all of
3 this as well, because when that public trust is shattered from
4 the actions of what the Chief of Police did in this particular
5 case, the highest levels of corruption.

6 And Mr. Kealoha's attorney argued that he wasn't the
7 mastermind, but he's such an important part of that scheme that
8 you saw unfold in the courtroom during the trial because
9 without him and his CIU unit, it can't come to fruition,
10 because Katherine only controls one part of that arm that can
11 really come down on the victims in this case. You need two
12 arms to squeeze tightly, and that is exactly what happened.

13 Mr. Kealoha and the Honolulu police officers that he
14 had engaged in this criminal act were the second arm that
15 squeezed together. They are the ones that really put the
16 pressure down. They were the ones that had the power to
17 disrupt normal government function. When officers are supposed
18 to be out on the street protecting the community, instead 10 to
19 15 officers are driving around following an innocent man for a
20 crime he did not commit.

21 And for those actions, Your Honor, those are the most
22 serious at the highest level of corruption, and I don't think
23 that Mr. Kealoha, when we talk about deterrence, which I think
24 is a really important factor, specific deterrence for
25 Mr. Kealoha, he won't be in that position again. But I think

1 general deterrence is something that is really, really
2 important because it must be that when you're trying to
3 generally deter other officers from even breaking the smallest
4 law or taking advantage of the power that they wield, because
5 officers do have enormous power and they have great
6 responsibility with that, and general deterrence is a very
7 important factor in this particular case.

8 Your Honor, for all the crimes that Mr. Kealoha
9 committed, we are asking that you sentence him to 87 months.
10 Thank you.

11 THE COURT: All right. Well, what I must do, of
12 course, is consider the relevant guidelines here. One of
13 those, of course, are the -- are the guidelines I must
14 consider. And here we have a total offense level 24, criminal
15 history category 1, with an advisory range of 51 to 63 months.

16 I'm not going to recite each of the 3553(a) factors.
17 I do want the record to reflect I'm very cognizant of the
18 parsimony clause that requires me to impose a sentence that is
19 sufficient but not greater than necessary to comply with the
20 goals of sentencing which are set forth in 18 U.S.C.
21 Section 3553(a)(2), and in shorthand, those are retribution,
22 incapacitation and deterrence.

23 Now, I'm going to go through somewhat of a timeline.
24 It will be a briefer one than I did this morning, but I do
25 believe it is important to provide some context before I get

1 into the sentence that I believe is appropriate here.

2 Some of this evidence I'm going to talk about really
3 does relate to Katherine Kealoha, and I'm not suggesting all of
4 it are things that Mr. Kealoha necessarily engaged in or even
5 knew about, but provides context for what he did do and what he
6 did know about. And there's no question that he engaged in
7 extremely serious conduct here.

8 Now, we know about the reverse mortgage. We know that
9 Katherine misrepresented the true nature of that mortgage to
10 Florence, who was then 89 years old. That there was to be a
11 benefit for Gerard in getting the Greenwood condo, but there
12 would be a benefit to the Kealohas in getting their sort of
13 finances in order, increasing their credit or fixing their
14 credit, and then paying off the reverse mortgage in short
15 order, three to six months.

16 Well, we know that was all a lie. That the net
17 proceeds were deposited into an account that Katherine
18 controlled in part. The condo certainly was purchased. But
19 the remainder wasn't used to consolidate debt and help them get
20 their credit in order. It was stolen, plain and simple, with
21 \$135,000 of those funds being used in a six-month period.

22 Now, Mr. Kealoha, maybe you didn't know check by check
23 what Mrs. Kealoha was doing. I can accept that.

24 I remember the trial testimony very well, Mr. Barbee,
25 about -- that you put forward about the number of checks that

1 he wrote over the years. And it was pretty compelling evidence
2 to show that he wasn't a hands-on person with the finances.
3 But you don't infuse \$135,000 in a six-month period into a
4 marriage without knowing it.

5 And if there's one thing I can say about you,
6 Mr. Kealoha, you're a smart guy. That's very clear to me.
7 You're a very smart person. You're not blind to what's going
8 on around you. At some level you may have stuck your head in
9 the sand. I understand that. But you don't infuse that sort
10 of money without knowing it. And 26,000 of that was spent for
11 you, ironically, for your induction brunch when you became
12 Chief of Police. More was spent on Mercedes and Maserati and
13 so on and so on.

14 So, some of this is what I believe to be the case
15 based on fair and reasonable inferences I'm drawing from the
16 evidence, and that is, that Mr. Kealoha knew that his and
17 Katherine's salaries were insufficient to support the lifestyle
18 that they selected. I want to be clear about that. They
19 selected, they chose to live.

20 Now, we do know then that bad blood began to develop
21 between Florence and Gerard in particular and Katherine. And
22 as we just heard, you know, Louis -- they tried to pull Louis
23 into it, but, you know, there was nothing that I recall that
24 came out of trial as far as -- as what he did. That is, as far
25 as I know, nothing. But the Puanas tried to get an explanation

1 as to what was going on with the reverse mortgage and were
2 treated with silence. No explanation came.

3 Katherine took steps to sort of hide the truth. And
4 in September of 2012, wrote this letter -- Florence, I'm sorry,
5 wrote a letter to Katherine expressing frustration and
6 threatened legal action, and we know Katherine's response. I
7 went through that this morning. Very, very aggressive is the
8 only fair way to categorize that letter.

9 And then we know that Gerard is arrested in June of
10 2011 for entering a neighbor's house. That Katherine engaged
11 in some bizarre and troubling behavior, and met with a sheriff
12 privately, had Gerard sent to Sand Island Treatment Center,
13 even though from the evidence at trial it did not appear he
14 normally would qualify or needed it. And Katherine took some
15 actions in relation to his plea of guilty that we talked about
16 earlier.

17 Now, again, I don't know that you know -- knew all of
18 that, Mr. Kealoha. I don't know that you knew all of that.
19 But it's hard to believe you didn't know trouble was brewing.
20 Serious, serious trouble was brewing between Gerard and
21 Florence on the one hand, and Katherine and, by implication,
22 you on the other. That a lawsuit was threatened. That money
23 was taken and converted to personal use that shouldn't have
24 been. And it wasn't going to look good for you. You were,
25 after all, the Chief.

1 So the Kealoha mailbox is stolen late in the evening
2 of June 21st. Apparently early the next morning, you were
3 going surfing, you noticed it. You tell Kathy, but you go on
4 to surf. Bobby Nguyen comes to the house and removes the
5 surveillance video. And at 1:28, Katherine speaks to Bobby
6 Nguyen, and then a couple minutes later calls 911 to report the
7 mailbox stolen.

8 Now, we know from the evidence that Ms. Kealoha met
9 with the police. She lied to them about the theft and the
10 value of the mailbox and so forth. And a decision was made. A
11 decision that I believe you were part of. Based on the
12 evidence and based on your trial testimony, what I believe was
13 right next door here -- Judge Kobayashi was in her normal
14 courtroom -- where you lied.

15 Think about that. The Chief of Police, one of the
16 largest police departments in the country, gets on a witness
17 stand in federal court, raises his right hand, swears to tell
18 the truth, the whole truth and nothing but the truth, and then
19 lies and says, That man Gerard Puana right there, he's the one
20 on the video. Knowing full well it was a lie that he was not
21 the man on the video.

22 But you and your wife and those under you went to work
23 to frame Gerard Puana. And Mr. Orabona is absolutely right,
24 you were not the mastermind, but you did master the frame job
25 that followed. Because it could not have succeeded without HPD

1 behind it. And that's what makes this case so shocking at the
2 end of the day. That's what makes it so shocking. It has
3 disturbed so many people. Because it could not have succeeded
4 but for you and but for your position.

5 And this is worth repeating. The Chief of Police, of
6 a major American city, worked overtime to frame someone of a
7 crime they didn't commit, and then took the witness stand
8 saying that that is the person in the video stealing the
9 mailbox.

10 And I will say what I said this morning. With
11 absolute certainty, I will say that is not Gerard Puana in that
12 video. Neither you nor Katherine has come forward and said who
13 it is, and you don't have to. But I know it's not Gerard
14 Puana. And when you were a hundred yards or so away over in
15 this courtroom, you knew that as well. But it didn't matter.
16 The oath didn't matter. And what you did to Gerard didn't seem
17 to matter.

18 And the unfortunate part of this is, given your
19 position as chief, this task wasn't that difficult. And it's
20 why it went undetected for so long. Who would have thought?
21 Who would have imagined?

22 Now, I don't know, and I've thought long and hard
23 about this, I don't know why you made the statements you made
24 after, after you falsely identified Gerard as the person in
25 that video when you testified before Judge Kobayashi. I do

1 believe you intentionally created a mistrial based on what you
2 said.

3 The government's theory, as I recall from some of the
4 briefing early on, is that, you know, this wasn't playing out
5 so well. Mr. Silvert was being pretty aggressive and things
6 were unravelling a bit. And this was a way to pull the plug.
7 That's the explanation, number one.

8 Explanation number two is maybe you started to feel
9 this wasn't right. You couldn't do it anymore. I don't know.
10 I don't have an answer to that. What I do know is you lied.
11 And then you caused a mistrial. That's the evidence before me.

12 And as part of the CIU involvement in the
13 investigation into the mailbox theft, CIU members conducted
14 24-hour surveillance on Gerard from the day after June 21st
15 through June 29th, using many, many officers. And it doesn't
16 take much to reach the conclusion that you authorized this. Or
17 approved it. I'm not saying you signed off on it necessarily.
18 It was part of the effort to frame Gerard. It's just hard to
19 imagine that those in CIU would not have done this without your
20 okay or belief that's what you wanted.

21 So this timeline and your involvement in this matter
22 tells all of us I think what is obvious, that both you and
23 Katherine took extreme measures to silence Gerard and Florence.
24 To minimize them to make sure they could not do harm to you or
25 harm to your reputation.

1 The fact that you set him up in isolation makes no
2 sense. Why -- why would you do that? But when you understand
3 the financial theft that Katherine engaged in and that you
4 find -- I'm sorry -- and that you profited from directly, it's
5 understandable. Twisted. Criminal. Almost unbelievable that
6 the Chief of Police would do it, but at least it makes sense.
7 It fits.

8 I agree that Katherine was the mastermind behind this.
9 But you were right there by her side. Right by her side.
10 Cheering her on and using your position as chief to aid the
11 criminal enterprise that you had helped establish.

12 Now, I won't go into the bank fraud conduct in great
13 detail. I do believe that you were, as I think I've already
14 said, lesser -- much lesser involved in that. But as you
15 admitted in the plea agreement, you understood that there were
16 fraudulent statements being made to the finance -- financial
17 institutions to obtain money. It was part of the overall need
18 to protect your image, to get in that money, protect the image
19 and live a lifestyle that two of you could not afford on your
20 public servant salaries.

21 Now, there are factors in mitigation, as Mr. Barbee
22 has pointed out. I won't go through all of these, but we have
23 no prior criminal history, no history of substance abuse. You
24 have family support. I do recognize your age. And as I said,
25 that Katherine is more culpable. I mean that -- that's pretty

1 obvious. But the fact that she was more culpable, as I think I
2 made clear, cannot excuse in any way your actions and what you
3 did as Chief of Police. She was not chief, you were.

4 At any point in time, Mr. Kealoha, you had the power
5 to say, Stop it. No. You've taken this too far. We need to
6 end this. Gerard, setting up Gerard? No. Can't do that. But
7 you didn't do that.

8 As far as the COVID risk, Mr. Barbee, I have to say
9 I'm not intending to send -- I mean, I don't know what they're
10 going to ask for, the government, but I can tell you because of
11 COVID, for sure I'm not going to incarcerate him now, and we'll
12 see how long until mittimus issues. So I don't know that
13 that's an issue I can take into account right now because I'm
14 not seeing mittimus today.

15 So when you look at all of these factors, clearly
16 there are many more in aggravation than in mitigation here.
17 The breadth of this criminal conduct is astonishing. It spans
18 many years and takes on several forms of corruption and
19 coverups. It reached, as you know, the highest levels of our
20 city government that included you as Chief of Police. And it's
21 clear you were driven not by public service, not by what took
22 you to the police department and the academy in 1983 at the age
23 of 22, and I don't doubt that you had good motives then. I
24 don't doubt that if you could go back then and see your future,
25 you would say, There's no way I would ever do anything like

1 that. But it's where you ended up. It's where you ended up.

2 And the evidence demonstrated the extent to which you
3 would go to protect your reputation and that of your wife and
4 to protect your financial status in the community. To have an
5 innocent relative charged with a crime he did not commit and
6 one which could result in significant prison time. And to do
7 so, you had to summon the help of multiple HPD officers,
8 diverting law enforcement attention from legitimate police
9 work, to serve your personal avarice. You unabashedly used the
10 power given to you to do good, and you set up Gerard.

11 And at least within HPD CIU unit, nobody apparently
12 was willing to question you. Or to challenge you. I have no
13 idea, of course, if anyone came to you and said, Louis, we
14 should be doing this? Does this make sense? But from the
15 evidence we have before us, everyone marched along in lockstep
16 with the goal of setting up Gerard Puana.

17 As I said earlier today, truth can be stranger than
18 fiction. This truly is the case where the truth seems to be
19 stranger than fiction. And this prosecution and the conduct
20 you engaged in has had measurable impact on our community.
21 Your conduct, that of Katherine, Bobby Nguyen and Derek Hahn,
22 has shaken the confidence in our governing institutions, and
23 most notably HPD. And of the four defendants who were
24 convicted, you stand atop of that pile. Again, because you
25 were chief, they weren't.

1 It's left many in the community speechless. How could
2 this happen here? How could it go on for so long undetected?
3 But the answer ultimately isn't a mystery when you sit back and
4 think. Again, you used your power, you abused your power at
5 HPD to nurture, feed and hide the corruption.

6 So here we have a guideline range of 51 to 63 months.
7 Ultimately I do believe an upward variance is appropriate in
8 this case. We've had a lot of discussions and hearings on
9 which guideline section applies, 2H1.1 or 2J1.2. It was hotly
10 contested. Ultimately I found 2J1.2 applies.

11 2H1.1 would have in my view more closely tracked the
12 actual offense conduct here. But that wasn't what I was
13 looking at. I was looking at the jury's verdict. And 2J1.2,
14 given the jury's verdict, is what I found is the appropriate
15 guideline.

16 So stated differently, the guideline that I apply here
17 today centers on obstruction of justice, not deprivation of
18 civil rights. And there's no question in my mind, none
19 whatsoever, whether you apply a preponderance standard, a clear
20 and convincing standard, a beyond a reasonable doubt standard
21 or beyond any doubt standard, there's no question that the
22 defendants conspired to deprive Gerard Puana of his civil
23 rights. To frame him of a crime he didn't commit. And they
24 succeeded. They did frame him for a crime he didn't commit.
25 He was arrested and put on trial.

1 And the sentence needs to reflect your position in the
2 community. Maybe the ultimate position of trust in the
3 community, the Chief of Police. So under Section 3553(a), I do
4 believe and will take this conduct into account, the
5 deprivation of civil rights.

6 So as I said, we have a total offense level 24,
7 criminal history category 1, a 51 to 63 months. I'm going to
8 vary upward, as I said, to take into account defendant's
9 position as Chief of Police, and to reflect the civil rights
10 violation, not taking into account in full by the guidelines.
11 So I'm going to vary upward from that range of 51 to 63 months.

12 My intended sentence is as follows: A sentence of
13 84 months of incarceration as to Counts 2, 6 and 8, under
14 17-582 and Count 4 under 18-68, and 60 months as to Count 1
15 under 17-582, with all counts to run concurrently.

16 As far as supervised release, three years as to each
17 count to run concurrently. Restitution, I'm not going to
18 impose a fine because of the amount of restitution involved
19 here. Restitution, get back to that, of \$237,698.56. And a
20 \$500 special assessment.

21 Now, as far as the restitution, in the proposed order
22 you sent me there's some reference to a partial payment of the
23 restitution. What -- and I forgot to ask you about that
24 earlier. What was that in reference to, Mr. Orabona? You
25 talked about an offset.

1 Is that the money from -- that's in the Court's
2 registry?

3 MR. ORABONA: No, my -- Your Honor, that's money
4 received from a third party.

5 THE COURT: I don't know what that is.

6 MR. ORABONA: Mr. Kevin Sumida paid a certain amount
7 of money into -- to the government as part of -- as part of a
8 separate action, Your Honor, and so that \$27,000 would be part
9 of that.

10 MR. WHEAT: The legal fees that Mr. Sumida took from
11 Florence Puana's bank account, about \$108,000, is an offset.
12 When they lost the guardianship case for Florence, Katherine
13 and Sumida were ordered to pay the legal fees for that, and
14 they had already taken the money out of her account. So
15 Mr. Sumida returned that money to the Puanas.

16 THE COURT: Okay. And that was part of the
17 calculation of the overall restitution amount?

18 MR. WHEAT: Correct.

19 THE COURT: And that money has been repaid.

20 MR. WHEAT: Yes.

21 THE COURT: Okay. All right. So I think in Katherine
22 Kealoha's and this, we should give the full amounts and say
23 less credit for any amounts paid, and then I can enter these
24 orders separately, which I think probably makes sense in this
25 case.

1 MR. WHEAT: Correct.

2 MR. ORABONA: Yes, Your Honor.

3 THE COURT: All right. Mr. Barbee, I assume you have
4 no problem with any of that.

5 MR. BARBEE: No, Your Honor.

6 THE COURT: As it lessens the restitution amount.

7 MR. BARBEE: No, Your Honor.

8 THE COURT: Okay. All right. So, Mr. Barbee, would
9 you waive my reading of the mandatory and standard conditions
10 of supervision?

11 MR. BARBEE: Yes, Your Honor. So waived.

12 THE COURT: So in addition to the mandatory and
13 special conditions of supervision, Mr. Kealoha, you must
14 cooperate in the collection of DNA. You must report to the
15 probation office in the federal judicial district where you are
16 authorized to reside within 72 hours of the time of your
17 release, unless the probation officer instructs you to report
18 to a different office or within a different time frame.

19 It would be my intent to waive the drug testing
20 condition. Is there any objection to that?

21 MR. ORABONA: No, Your Honor.

22 THE COURT: All right, I'll waive the drug testing
23 condition, given there's no history or indication of substance
24 abuse.

25 You must participate in a mental health assessment and

1 any recommended treatment in a mental health program and follow
2 the rules and regulations of that program. The probation
3 officer in consultation with the treatment provider will
4 supervise your participation, such as provider, location,
5 modality, duration and intensity.

6 Restitution is due jointly and severally with
7 Katherine P. Kealoha as follows:

8 In 17-582, \$11,565.25 to Gerard Puana.

9 \$60,863.49 to the estate of Florence Puana, to be
10 offset as stated by the government.

11 And then 18-68, Ransen Taito, \$81,384.91.

12 Ariana Taito, \$83,884.91.

13 So total restitution, \$237,698.56. Like I say, less
14 these credits the government referenced.

15 Restitute -- now, as far as the amount of restitution
16 while in custody, let's talk about that, Counsel. Right now as
17 I understand it, it's about nine -- 9700 a month? Is the
18 pension amount?

19 Let me see if I have -- yeah, 9720 approximately. Is
20 the net, net HPD pension amount.

21 So I look at the amount of restitution that he could
22 pay while in custody as different than the amount he could pay
23 once he's no longer in custody.

24 Mr. Orabona, Mr. Barbee, did you want to speak to
25 that?

1 MR. ORABONA: We'll defer to the Court on that, Your
2 Honor, given the -- given the pension payment.

3 MR. BARBEE: Likewise, Judge. I haven't studied the
4 details on that, so we'll -- we'll defer to the Court.

5 THE COURT: All right. So restitution payments of
6 7,500 per month shall commence 30 days after the start of any
7 term of incarceration. Thereafter -- and really thereafter
8 means when he's out of custody, so no longer serving time. So
9 that shall run during the term of imprisonment. Thereafter any
10 unpaid balance is to be paid during the period of supervision
11 in monthly payments of 50 percent of your monthly income, gross
12 monthly income, commencing 30 days after the start of
13 supervision.

14 The Court may order this requirement to be changed
15 from time to time as your circumstances warrant. But no court
16 order shall be required for your voluntary agreement to pay
17 more than the court-ordered amount. Interest is waived. And
18 payment must be made by payroll deduction when applicable. You
19 must notify Probation of any change in your financial
20 circumstances that affect your ability to pay, and that may be
21 reviewed annually by Probation.

22 When you get out of custody, I'm going to ask
23 Probation to look at that right away because I don't know where
24 you're going to be in relation to the divorce and then where --
25 where all that money goes. And so that may be appropriately

1 change depending on that, Mr. Kealoha. Okay?

2 But while you're in custody, it will be \$7500 per
3 month will be paid towards your restitution obligation. After
4 that, as of now I'm going to say 50 percent of your gross, but
5 I'll have Probation look at that and we'll see where that is
6 exactly at the time.

7 You must provide Probation access to any requested
8 financial information and authorize the release of any
9 financial information, and that may be shared with the U.S.
10 Attorney's Office.

11 You must not incur new credit charges or open
12 additional lines of credit or apply for any loans without the
13 prior approval of Probation. You must not borrow money or take
14 personal loans from any individual without the prior approval
15 of Probation.

16 You must maintain a single personal bank account,
17 separate and apart from your spouse, any family members or
18 others, into which all income, financial proceeds and gains
19 must be deposited, and from which all expenses must be paid.

20 You must apply all monies received from income tax
21 refunds, lottery winnings, inheritance, judgments, and any
22 anticipated or unexpected financial gains to the outstanding
23 court-ordered financial obligation at the discretion and
24 direction of the Court.

25 You must notify the probation officer if you obtain an

1 interest in any property under any other name or entity,
2 including a trust, partnership or corporation. You must notify
3 the probation office before transferring any property you own,
4 directly or indirectly, including any interest held under any
5 other name or entity, including a trust, partnership or
6 corporation.

7 You must not communicate or otherwise interact with
8 Gerard Puana, Ransen Taito, Ariana Taito, or CPM -- you know
9 who that is, sir?

10 (Counsel and client conferring.)

11 THE DEFENDANT: (Nods head up and down.)

12 THE COURT: Okay? All right.

13 -- either directly or through someone else without
14 first obtaining permission of the probation officer.

15 And last, you must submit your person, place -- I'm
16 sorry, person, property, house, residence, vehicle, papers or
17 office to a search conducted by Probation. Failure to submit
18 to a search may be grounds for revocation. And you must warn
19 any occupant of your premises regarding this condition.

20 A probation officer may conduct a search only when
21 reasonable suspicion exists that you have violated a condition
22 of supervision and the area or areas to be searched contain
23 evidence of this violation. Any search must be conducted at a
24 reasonable time and in a reasonable place.

25 Now, I want to say that I've considered this

1 carefully, this sentence. And I considered the parsimony
2 clause. And I do believe that general deterrence is a critical
3 component of this sentence. As Mr. Orabona states, I agree
4 with specific deterrence, Mr. Kealoha is not going to be in a
5 position to abuse the position of trust again.

6 But I think you look at the goals of sentencing,
7 including retribution and general deterrence, this sentence,
8 although significant, does comport with the parsimony clause.
9 That is, I comply -- I'm sorry, I impose a sentence that is
10 sufficient but not greater than necessary to comply with those
11 goals of sentencing.

12 Are there any legal objections to the intended
13 sentence as stated?

14 MR. ORABONA: No, Your Honor.

15 MR. BARBEE: No objection.

16 THE COURT: All right. So the Court does impose
17 sentence as stated.

18 Mr. Barbee, you may have been here earlier, but I
19 believe the government indicated that they are going to seek
20 what I've learned since this morning is something called
21 restoration from the Department of Justice, such that the funds
22 now being held in the registry of the Clerk of Court could be
23 applied to restitution as opposed to forfeiture. That
24 requires, as I understand it, a specific finding from a
25 specific person at DOJ for that to happen.

1 And so that will be applied for is my understanding;
2 is that right?

3 MR. ORABONA: That's our intention, Your Honor, yes.

4 THE COURT: All right. So that may further reduce the
5 restitution amount if that -- if that is approved.

6 MR. BARBEE: Yes, Your Honor.

7 THE COURT: Okay. Mr. Kealoha, you understand -- you
8 also understand, so there are certain things that you agreed to
9 forfeit through the plea agreement. Do you remember that?

10 THE DEFENDANT: Yes.

11 THE COURT: And I'm going to be ordering a final order
12 of forfeiture regarding those items. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you have any questions about that?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Is there anything else in that
17 regard or anything else I need to cover, Mr. Orabona?

18 MR. ORABONA: No, Your Honor. Thank you.

19 THE COURT: All right. So the Court does impose
20 sentence as stated.

21 Is there anything to dismiss then, Mr. Orabona?

22 MR. ORABONA: Yes, Your Honor. We would move to
23 dismiss any remaining counts against this defendant without
24 prejudice.

25 THE COURT: All right. So I'll dismiss the remaining

1 counts in the bank fraud third superseding indictment as to --
2 as to Mr. Kealoha.

3 All right. So as far as recommendations, Mr. Barbee.

4 MR. BARBEE: Yes, Your Honor. In speaking with
5 Mr. Kealoha and some of the concerns that I've already raised
6 with the Court, his first preference would be on the West Coast
7 of the United States, specifically FCI Sheridan, Oregon, or FPC
8 Sheridan or any other --

9 THE COURT: Well, why West Coast, though? I mean, you
10 know, you say that he may face a greater hardship than others.
11 He's more likely to be known by Hawaii inmates on the West
12 Coast than -- which are more likely to be in the West Coast
13 than if he went to the East Coast.

14 MR. BARBEE: It's kind of a mix of factors. It would
15 be on the plus side of the West Coast would be the visitation.
16 When COVID clears, there's going to hopefully be the formally
17 liberal visitation. And that's the primary reason.

18 But, yeah, on the other side, the Court's correct, he
19 might be better known at Sheridan. But we've discussed this,
20 and he has also discussed it with other people that know way
21 more than I do about the BOP procedures, and he is comfortable
22 requesting Sheridan.

23 THE COURT: All right. So I'll make FCI Sheridan to
24 be near family as his number one request.

25 Okay. And self-surrender date. You can argue,

1 Mr. Orabona, but you heard me already, I think.

2 MR. ORABONA: I did, Your Honor. You know the
3 government's position on this, but, you know, we understand the
4 COVID situation, but we would like a surrender date because, as
5 Your Honor, you know, just ordered, he'll start paying
6 restitution once he starts serving his sentence. So for the
7 victims, that would be our position would be remand, but we
8 understand the Court's ruling on that already. Thank you.

9 THE COURT: All right. Yeah, I mean just the COVID
10 epidemic, Bureau of Prisons I think is putting up a good fight,
11 but it is a fight, and they don't always win that fight. And
12 so unless I believe someone is a danger, and I don't see that
13 right now -- a danger to the community right now, and I don't
14 see that for Mr. Kealoha, my general view is people can wait
15 until -- until we have some protection within the prisons.

16 MR. BARBEE: Can we set a status date down the road?

17 THE COURT: No, I think we can set a mittimus date,
18 and then we'll see where that is.

19 MR. BARBEE: Okay.

20 THE COURT: Okay? So I suggest we set a date in
21 April, and then we'll see where things stand.

22 MR. BARBEE: Makes sense.

23 THE COURT: All right. Can we get a date in April?

24 THE COURTROOM MANAGER: April 12th, 2021, by 2 p.m.,
25 Your Honor.

1 THE COURT: All right. So, Mr. Kealoha, I'm going to
2 let you stay out under the present conditions of bail. Do you
3 understand that, sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. But you must agree to self-
6 surrender to the institution to which you're designated.
7 Bureau of Prisons will make that decision, not me. I'll make a
8 recommendation, but they'll decide. By 2 p.m., April 12th,
9 2021, at the institution to which you are designated. Do you
10 understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you promise me you'll do that?

13 THE DEFENDANT: Promise.

14 THE COURT: Do you understand failure to turn yourself
15 in by that time on that date is a separate criminal offense for
16 which you can be prosecuted?

17 THE DEFENDANT: I will be compliant, sir.

18 THE COURT: All right. Okay.

19 All right. So other than appellate rights, is there
20 anything else we need to cover, Mr. Barbee?

21 MR. BARBEE: No, Your Honor.

22 MR. ORABONA: No, Your Honor.

23 THE COURT: Ms. Ing-Dodson, does that cover
24 everything?

25 PROBATION OFFICER: I believe so, Your Honor. Nothing

1 else.

2 THE COURT: Okay. So, Mr. Kealoha, you did enter into
3 a plea agreement that covered both cases, including the trial
4 case and the bank fraud, in which you waived most of your
5 rights to appeal the sentence I just imposed.

6 But if you believe you can appeal a matter not waived
7 in the plea agreement or if you believe that waiver provision
8 is not enforceable, you must file a Notice of Appeal within
9 14 days of entry of judgment. Failure to do so acts as a
10 waiver, meaning you forever give up your right to appeal. If
11 you wish to bring an appeal but cannot afford counsel, one
12 would be appointed for you free of charge. Do you understand
13 those rights?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. And Mr. Barbee will cover
16 those with you in some more detail at some point after the
17 sentencing here today.

18 All right. Anything else, Counsel?

19 MR. ORABONA: No, Your Honor.

20 MR. BARBEE: No, Your Honor.

21 THE COURT: All right. Court is in recess.

22 (The proceedings concluded at 2:58 p.m.,
23 November 30, 2020.)

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COURT REPORTER'S CERTIFICATE

I, CYNTHIA FAZIO, Official Court Reporter, United States District Court, District of Hawaii, do hereby certify that pursuant to 28 U.S.C. §753 the foregoing pages is a complete, true, and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

DATED at Honolulu, Hawaii, January 6, 2021.

/s/ Cynthia Fazio
CYNTHIA FAZIO, RMR, CRR, CRC